HARVARD LAW REVIEW

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM. . . . . 35 CENTS PER NUMBER.

DEDICATION OF REALTY — NATURE OF DEDICATOR'S ACT. — The recent case in Minnesota of *Flaten* v. *Moorhead*, 53 N. W. Rep. 807, raises a question of dedication, without laying to rest the much-disturbed spirit in dedication, — the legal fee. A railroad had deeded land to defendant city by a warranty deed, with this qualifying clause: "Said tract of land, hereby conveyed, to be forever held and used as a public park." The defendant city was about to build upon the land so conveyed a prison. One of the public apparently sues for an injunction, which the court grants, saying, with perfect propriety, that it was not necessary to then determine whether the grant was of a mere easement, or an estate upon condition, or estate in trust. Now, if the fee ever passes out of the owner in dedication, it would seem that it must here, for there is a warranty deed outright to the city, a grantee capable of taking even an out-and-out gift, and it would seem that the dedicator had parted with the fee to trustees.

First, what does the dedicator part with; what rights do the public win? The better view is that he does not pass the fee. *St. Mary, Newington* v. *Jacobs*, L. R. 7 Q. B. 53.

Even in the principal case the fee does not pass. If it did, it would be upon trust, and a *bona fide* purchaser might acquire the whole estate. But this would be contrary to the spirit of the entire doctrine of dedication, under which the public's right can never be taken from them. *New Orleans* v. *United States*, 10 Pet. 734. The better view is that the public acquire rights in another's land in the nature of an easement.

Then how does the dedicator part with these rights? The magic of dedication seems particularly effective here, for this right in land can be granted by parol (*Barclay* v. *Howell's Lessee*, 6 Pet. 498); can be granted to an innominate grantee, — the unincorporated public (*New Orleans* v. *United States*, 10 Pet. 662); and can be acquired by use for a time less than the period of prescription (*Noyes* v. *Ward*, 19 Conn. 250).

Thus the dedicator's act is not essentially a legal grant. He may work

a dedication without the necessities of a common law grant. It is rather a declaration of his, which he is not allowed to deny, that he shall be indictable at the hands of whom it may concern.

In this light, dedication seems unilateral; yet, since some form of acceptance by the public is necessary to make the dedicator's act irrevocable it is not entirely unilateral.

LIABILITY OF CORPORATIONS TO EXEMPLARY DAMAGES FOR THE TORTS OF THEIR AGENTS. — One of the worst abuses in the working of the rule as to exemplary damages has received a salutary check in a recent decision of the Supreme Court of the United States (*Lake Shore & M. S. Ry. Co.* v. *Prentice*, 13 S. C. Rep. 261). To many lawyers the justice of punishing a defendant criminally without allowing him a trial in accordance with the criminal law, has never appeared perfectly obvious. The whole principle of "smart money" seems to many an unnecessary and illogical survival of the times when the jury were sole arbiters of the amount of damages as well as of the facts. But whatever the true theory may be, the practice of giving punitive damages in cases of aggravated tort is now in most jurisdictions too firmly established to be overturned. The essence and justification of the practice is in the convenient punishment which it inflicts upon flagrant wrongdoers. Compensation is all that the plaintiff is ever entitled to ask; but it may not be inexpedient to make the defendant "smart" for his wanton or oppressive conduct; and if the plaintiff reaps the benefit of this punishment, — why, so much the better for him. Now, as the whole object of the rule is the punishment of the defendant, it is altogether clear that the rule should be applied only in cases where the defendant has himself been guilty of some outrageous act. Accordingly, it has long been the better opinion that a master is not liable in exemplary damages for injuries resulting from the acts of his servant, unless the criminal intent, which alone warrants the imposition of such damages, can be brought home specifically to him (*The Amiable Nancy*, 3 Wheat. 546). The plaintiff must be fully compensated; but there is no reason in law or in the nature of things why the master should be punished like a criminal for acts which he did not do and could not prevent. It would seem naturally to follow that corporations are not to be held liable in punitive damages for the oppressive conduct of servants whom they have not been negligent in choosing, and whose acts they neither authorized nor approved. Nevertheless, many courts, which do not require the individual principal to pay more than compensation for the injurious acts of his servant, do hold the shareholders of corporations, and especially of railway corporations, liable to be fined in the discretion of a jury for evil designs which they never entertained. The reason for this anomalous extension of an anomalous rule appears to be a lively distrust of corporations in general, and of railway corporations in particular. We are told in a leading case on this subject (*Goddard* v. *G. T. Ry. Co.*, 57 Me. 202) that "all attempts to distinguish between the guilt of the servant and the guilt of the corporation, or the malice of the servant and the malice of the corporation, is sheer nonsense, and only tends to confuse the mind and confound the judgment." By way of complete and crushing answer to the objection that this policy results in punishing the innocent for the sins of the guilty, it is said that "if those who are in the habit of think-